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7 Attorney for Plaintiff  
8 TRICOR AMERICA, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 TRICOR AMERICA, INC., a California  
12 corporation,

13 Plaintiffs,

14 vs.

15 DHL CANADA EXPRESS, LTD. a Canadian  
16 corporation; LOOMIS CANADA HOLDING  
17 COMPANY, INC., a Canadian corporation; and  
18 DOES 1 through 25, inclusive.

19 Defendants.

Case No.: C07 4949 CRB

DECLARATION OF LAURA  
EACH NGUYEN IN SUPPORT  
MOTION FOR SUMMARY  
JUDGMENT AND IN THE  
ALTERNATIVE MOTION FOR  
SUMMARY ADJUDICATION;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF

Date: June 27, 2008

Time: 10:00 a.m.

Courtroom: 8

*[Declarations of Laura Each  
Nguyen, Andy Sun, Richard Cruz,  
and John Marticio; Notice of Motion  
and Motion for Summary Judgment;  
Statement of Uncontroverted Facts  
and Conclusions of Law filed  
concurrently herewith]*

I, Laura Each Nguyen, declare as follows:

1. I am an attorney, licensed to practice before all of the courts in the State of California and I am attorney of record for Plaintiff Tricor America, Inc. in this action. The statements contained in this declaration are made of my own personal knowledge and where made on information and belief, I believe them to be true. If called upon to testify thereto, my testimony will be substantially the same as the statements contained in this declaration.

2. On or about April 7, 2008, I took the deposition of Ciro Anzivino, an employee of DHL Canada. During the deposition of Mr. Anzivino, Mr. Anzivino acknowledged that DHL Canada continued to request Tricor's services for four months following their notice of the rate increases. A true and correct copy of the pertinent portions of Mr. Anzivino's deposition are attached hereto AS Exhibit A and incorporated by reference.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 19<sup>th</sup> day of May 2008.



LAURA EACH NGUYEN

April 7, 2008

Ciro Anzivino

26

1 Q. Did he have a copy of the rate increase  
2 notice?

3 A. No.

4 Q. Had he remembered seeing one?

5 A. I don't -- I don't remember.

6 Q. Did he acknowledge receiving the  
7 November -- the invoice sent by Tricor in  
8 November 2006?

9 A. I'm not sure.

10 Q. Do you recall approving for payment the  
11 invoice sent in November 2006?

12 A. Yes.

13 Q. And are you aware that the notice of rate  
14 increase is sent with the invoice?

15 A. I don't recall.

16 Q. Did you object to the 2006 rate increase?

17 A. Yes.

18 Q. When did you object to the November 2006  
19 rate increase?

20 A. I don't remember exactly when.

21 Q. Your best estimate?

22 A. It was in 2007.

23 Q. Why didn't you object to the 2006 rate  
24 increase upon receiving the notice?

25 A. Because I didn't receive it until 2007.

P A U L S O N

ANZIVINO, CIRO  
WORD INDEXANZIVINO, CIRO  
CONDENSED TRANSCRIPTANZIVINO, CIRO  
WORD INDEX

1 Q. But Loomis received it in 2006. Do you --  
2 are you aware of that?

3 A. No, no.

4 Q. Did you continue to use Tricor's services  
5 after receiving the notice?

6 A. Yes.

7 MS. DUPIC: Wait. Objection. Misstates  
8 prior testimony.

9 MS. NGUYEN: Q. How long after receiving  
10 the notice did you continue to use Tricor's  
11 services?

12 A. Approximately --

13 MS. DUPIC: Well, objection. He never  
14 said that he received the notice.

15 MS. NGUYEN: Yes, he did. He just  
16 testified that he received the notice in 2007.  
17 You're trying to change his testimony.

18 MS. DUPIC: No.

19 MS. NGUYEN: And you're coaching the  
20 witness.

21 MS. DUPIC: No, I'm not.

22 MS. NGUYEN: Yes, that's exactly what  
23 you're doing.

24 MS. DUPIC: No, I'm not. Could we have  
25 the question read back, please?

P A U L S O N



(Record read as follows:

QUESTION:

"How long after receiving the notice did you continue to use Tricor's services?"

MS. DUPIC: You can answer if you know.

THE WITNESS: Approximately four months.

MS. NGUYEN: Q. And did you pay for those services?

A. Partial.

Q. Why didn't you pay for all of the services?

A. Because I -- basically I identified that they were incorrect, the invoicing was incorrect.

Q. And how were they incorrect?

A. The rates went up dramatically.

Q. Were the rates reflective of the notice?

A. Yes.

Q. Okay. So how were they incorrect?

A. They were dramatically higher.

Q. But they were reflective of the notice?

A. Yes.

Q. Did you intend to pay for the services, after receiving the notice, pursuant to the rates noticed?

P A U L S O N

1 A. I don't understand.

2 Q. Okay. You have acknowledged that you  
3 received the notice and you continued to use  
4 Tricor's services for another four months.

5 When you received the notice and you saw  
6 the rates, did you intend to pay for those services  
7 at those rates after you received the notice?

8 A. Yes, if it was correct, as per our initial  
9 agreement.

10 Q. And what initial agreement is that?

11 A. When the relationship started between  
12 Tricor and DHL or Loomis.

13 Q. Okay. And did you ever determine whether  
14 or not it was correct pursuant to the agreement that  
15 you just referred to?

16 A. No.

17 Q. And how was it incorrect?

18 A. I was trying to work with Andy to come up  
19 with this initial agreement to --

20 Q. Okay.

21 A. -- basically confirm the invoices.

22 Q. Okay. And did you reach a conclusion?

23 A. No, no.

24 Q. So you don't know if those rates are  
25 correct or not today?

P A U L S O N

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PROOF OF SERVICE BY MAIL

I, Laura Each Nguen, declare as follows:

I am over the age of 18 years, and not a party to or interested in the within entitled action.

I am a principal at the Law Offices of Laura D. Each and my business address is 5776 Lindero Canyon Road, D-233, Westlake Village, CA 91362.

On May 19, 2008, I served by mail the following documents:

DECLARATION OF LAURA EACH NGUYEN

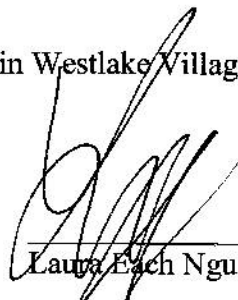
I enclosed a true and correct copy of said document(s), in an envelope via United States Mail, addressed as follows:

Carrie M. Dupic  
Robinson & Wood, Inc.  
227 North First Street  
San Jose, CA 95113

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The firm's practice is to deposit mail with the United States Postal Service in Westlake Village, California, on the same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing on the aforementioned date, following ordinary business practice.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 19, 2008 in Westlake Village, California

  
\_\_\_\_\_  
Laura Each Nguyen, Attorney at Law